

PRIVATE SECTOR WHISTLEBLOWER PROTECTIONS

OVERVIEW

Many federal laws protect private sector workers from retaliation when they blow the whistle. Some laws also provide monetary awards to individuals who expose fraud while extending anti-retaliation protections. This document largely focuses on the laws administered through the Labor Department's [Whistleblower Protection Program](#). See a [complete list of statutes here](#).

LABOR DEPARTMENT'S WHISTLEBLOWER PROTECTION PROGRAM

The Labor Department's Occupational Safety and Health Administration (OSHA) administers [25 private sector whistleblower laws](#) that prohibit retaliation against individuals who make protected whistleblowing disclosures. Some laws apply across industries, giving workers the opportunity to safely disclose workplace health and safety concerns, for instance. Other laws are sector-specific, affording workers the right to report concerns such as their employer's alleged violation of federal industry standards.

Note: All OSHA-Administered whistleblower statutes protect lawful communications with Congress.

SCOPE OF LAWS

Like other federal whistleblower statutes, private sector laws typically define the scope of a protected disclosure, outlaw reprisal, and provide a means of redress for employees to seek relief. Often, these protections are included in statutes that govern industry standards. Accordingly, OSHA breaks the laws into [several subject-specific categories](#). Note that most laws protect disclosures of information as well as conduct such as providing testimony.

Note: The list below provides examples of laws under each category but is not exhaustive.

EMPLOYEE SAFETY – These laws ensure that employees can safely report occupational safety and health concerns tied to the workplace. These disclosures may also implicate broader public health and safety concerns such as a medical professional exposing threats to the public through lax safety standards in their hospital. (e.g. [Occupational Safety and Health Act](#))

DISCLOSURES RELATED TO CONSUMER PRODUCTS – These laws protect individuals who disclose concerns related to violations of consumer safety protections. For example, an employee of a consumer product manufacturer alleging that his employer isn't properly inspecting merchandise prior to selling it to a distributor. (e.g. [Consumer Product Safety Improvement Act](#))

DISCLOSURES RELATED TO TRANSPORTATION – These laws protect individuals who blow the whistle on issues such as the violation of federal transportation safety standards. For example, disclosures regarding the manufacturing of motor vehicles and aircraft as well as public and commercial transit laws. (e.g. [Moving Ahead for Progress in the 21st Century Act](#))

DISCLOSURES RELATED TO FOOD SAFETY – The [Food Safety Modernization Act](#) protects workers in various food-related industries, such as manufacturing and processing, when they disclose alleged violations of federal food standards. For example, a food packaging worker disclosing violations of the Federal Food, Drug, and Cosmetic Act.

DISCLOSURES RELATED TO ENVIRONMENTAL LAWS – These laws protect workers who disclose violations of federal environmental standards. For example, disclosures related to asbestos, pollution laws, and threats to safe drinking water. While most private sector laws only protect private sector employees, several of the environmental whistleblower laws also protect public employees. (e.g. [Clean Air Act](#))

DISCLOSURES RELATED TO FRAUD AND FINANCIAL WRONGDOING – These protections work to safeguard individuals who expose fraud and misconduct in the financial industries or by publicly-traded companies, such as disclosures related to consumer financial products and deception of company shareholders. (e.g. [Sarbanes Oxley Act](#))

ADMINISTRATIVE RELIEF PROCESS

If an individual believes they are facing unlawful whistleblower retaliation pursuant to an OSHA-administered whistleblower statute, they must follow an administrative process, outlined below, to seek redress.

FILING A COMPLAINT

When a whistleblower [files a retaliation complaint with OSHA](#), they become a “complainant.” After the complaint is filed, OSHA investigators will conduct a preliminary review of the complaint to ensure that it was filed within the law’s scope and statute of limitations. Investigators may also interview the complainant for the information needed to make an initial determination.

A note on the role of partner agencies: While many private sector whistleblower protections are administered by OSHA, the substantive portions of the underlying statute are enforced by what OSHA calls “[partner agencies](#).” For example, OSHA investigates retaliation complaints under the Taxpayer First Act, but the IRS enforces the other portions of the law, including the award program.

INVESTIGATION INTO RETALIATION ALLEGATIONS

If the complainant clears the initial merit determination, [OSHA investigates](#) whether unlawful retaliation took place. At this stage, the complainant, the subject of the complaint, and the partner agency—where applicable—are notified that OSHA has opened an investigation.

Both parties are expected to be involved throughout the investigation, providing documentation and statements to the investigator on request. Once the investigation is complete, OSHA will decide whether the subject of the complaint engaged unlawful retaliation and will issue a remedy based on what the violated statute allows. Depending on the relevant law, whistleblowers may be able to appeal this decision to an administrative law judge.

A note on timing: The investigatory process can vary in duration depending on the nature of the complaint and the relevant law. Several statutes allow the complainant to “kick-out” their complaint to federal court once the investigation lasts a certain number of days, as indicated by the relevant statute.

OPTIONAL SETTLEMENT PROGRAM

Where applicable, the two parties may agree to participate in OSHA’s free [Alternative Dispute Resolution \(ADR\)](#) program, which pauses the ongoing investigation. This program is only offered in certain regional offices. ADR allows parties to settle on a remedy that is agreeable to both sides in lieu of the investigation and resolution process. If parties fail to settle, the investigation resumes.

KEY DISPARITIES BETWEEN STATUTES

Each private sector whistleblower law differs somewhat in scope and application. A careful read of the law is necessary to ensure a complete understanding of the applicable rights. Below are key discrepancies to keep in mind:

- ❖ **Statute of limitations** – The window of time a whistleblower has to file their retaliation complaint
- ❖ **Protected class** – Who is protected from retaliation?
- ❖ **Due Process** – The process by which individuals enforce their rights. For example, some laws allow whistleblowers to file their claim in federal court after a certain amount of time
- ❖ **Burden of proof** – The amount of evidence that is required to prove retaliation and win a case
- ❖ **Remedies** – The relief and compensation that a whistleblower is entitled to once they win their case

A note on gaps in the law: While many industries are represented with specific whistleblowing laws, some are excluded such as the meatpacking industry. However, these employees may still be protected from retaliation if they have made a protected disclosure pursuant to a broader statute such as the Occupational Safety and Health Act or the Sarbanes Oxley Act.

OTHER PRIVATE SECTOR PROTECTIONS ADMINISTERED BY THE LABOR DEPARTMENT

While OSHA administers most of the private sector whistleblower protections within the Labor Department's jurisdiction, other sub-agencies administer other whistleblower statutes:

- ❖ **Mine Safety and Health Administration:** Administers the [whistleblower protections](#) of the Mine Act, which prohibits retaliation against miners who make protected disclosures such as identifying mine-related hazards, seeking mine inspections, and refusing to engage in dangerous work.
- ❖ **Wage and Hour Division:** Enforces the federal minimum wage under the Federal Labor Standards Act as well as other related federal standards regarding worker pay. Administers whistleblower protections tied to [each law it oversees](#).
- ❖ **Veterans Employment and Training Service (VETS)** – Administers the Uniformed Services Employment and Reemployment Rights Act (USERRA) as it applies to private sector employers. USERRA prohibits discrimination based on military status and provides [whistleblower protections](#) for individuals who exercise their rights under the Act.

WHISTLEBLOWER AWARD PROGRAMS

Some whistleblower laws provide a monetary award to whistleblowers when their disclosures lead to a financial recovery for the federal government. These programs recoup billions of defrauded taxpayer dollars each year. These laws also include anti-retaliation protections. Note that the protections differ between laws.

The [False Claims Act \(FCA\)](#) is the U.S.'s pioneer whistleblower award law. Sometimes called "Lincoln's Law," it was established in 1863 in response to defense contractor fraud during the American Civil War. The FCA allows individuals to expose fraud and receive up to 30 percent of the recovery ([31 U.S.C. §§ 3729 – 3733](#)). Note that there may be restrictions on claiming an award under the FCA where disclosures have previously been made elsewhere. Knowledgeable counsel is advisable.

OTHER WHISTLEBLOWER AWARD PROGRAMS:

- ❖ [Anti-Money Laundering award program](#): Awards disclosures made to the Treasury or Justice Departments that expose money laundering made unlawful under the Bank Secrecy Act.
- ❖ [Commodities Future Trading Commission \(CFTC\) award program](#): Awards disclosures that expose violations of the Commodities Exchange Act where there is at least one million dollars in recovery.
- ❖ [Internal Revenue Service \(IRS\) award program](#): Awards whistleblowers who expose tax fraud to the IRS based on the recovery.
- ❖ [Securities and Exchange Commission \(SEC\) award program](#): Awards individuals who make disclosures regarding alleged company violation of federal securities laws.

ADDITIONAL RESOURCES

- ❖ [CRS: Survey of Federal Whistleblower and Employee Protection Statutes](#)
- ❖ [OSHA Statutes summary chart](#)
- ❖ [OSHA retaliation protection by subject](#)
- ❖ [OSHA whistleblower investigations manual](#)